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Treasure Studio, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MOONBUG ENTERTAINMENT
LIMITED and TREASURE STUDIO, INC.,

Plaintiffs,

v.

BABYBUS CO., LTD and BABYBUS
(FUJIAN) NETWORK TECHNOLOGY
CO., LTD,

Defendants.

Case No: 3:21-cv-06536-EMC

**DECLARATION OF FRAN KRAUSE IN
SUPPORT OF PLAINTIFFS'
OPPOSITION TO DEFENDANTS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT OF NONINFRINGEMENT**

FILED UNDER SEAL

Date: February 2, 2023
Time: 1:30 pm
Courtroom: 5 – 17th Floor
Judge: Hon. Edward M. Chen

1 I, Fran Krause, hereby declare as follows:

2 1. I am Faculty in the Character Animation Program at the California Institute of the
3 Arts. The law firm Tyz Law Group PC, counsel for Plaintiffs Moonbug Entertainment Ltd. and
4 Treasure Studio, Inc., has retained me as an expert in this case. I submit this declaration in
5 support of Plaintiffs' Opposition to Defendants' Motion for Partial Summary Judgment for Non-
6 Infringement. I make this declaration based on my own personal knowledge. If called as a
7 witness, I could and would testify competently to the matters set forth herein.

8 2. To prepare my October 25, 2022 Opening Expert Report in Support of Plaintiffs'
9 Claims ("Opening Report," which I understand has been filed in this case at Dkt. No. 164-1 and
10 Dkt. No. 175-5)¹, I reviewed and examined all of the Super JoJo videos accused of infringement
11 that are listed in my Opening Report at Appendix 4, Part 2 ("Infringing Works"). *See* Dkt. 164-1
12 (Opening Report) at PDF pages 246-368. I also reviewed development documents for the
13 Infringing Works. As set forth in my Opening Report, it is my opinion that all of the Infringing
14 Works are substantially similar to the copyrighted CoComelon Works. *See* Dkt. 164-1 ¶ 92
15 (defining "CoComelon Works"), ¶¶ 190, 194, 234, 236-40, Appendix 4 (setting forth substantial
16 similarity opinions regarding the Infringing Works, PDF pages 241-368). I am informed and
17 understand Defendants' Motion seeks Summary Judgment on 336 of these Infringing Works.

18 3. My opinions regarding substantial similarity were developed and are supported by
19 the analysis I performed on each Infringing Work, and which is tabulated in Appendix 4 of my
20 Opening Report. Dkt. 164-1, Appendix 4 (PDF pages 241-368). Appendix 4, Part 1 is a chart
21 that sets out 121 elements of audiovisual expression developed, selected and combined by
22 Moonbug in the CoComelon works. Each element is described with a high-level textual
23 description which I used as shorthand to refer to the element as it is expressed in CoComelon
24 Works. Elements 1-29 relate to CoComelon's JJ character, elements 1-10 refer to his physical
25

26 ¹ I am informed and understand my October 25, 2022 Opening Report is available in the record
27 of this case at in multiple locations. I this text I cite to the publicly filed version of the Opening
28 Report at Dkt. No. 164-1 (Dkt. 164, Ex. 1), but additionally direct the Court to the unsealed copy
that I understand was filed at **Dkt. No 175-5** for further review.

characteristics, and elements 11-29 to his conceptual characteristics developed in the CoComelon Works. Elements 30-57 relate to the physical (elements 30-37) and conceptual characteristics (elements 38-57) of JJ's family. Elements 58-114 relate to the look and feel (elements 58-102), cinematography (elements 103-108) and song forms (elements 109-114) of the CoComelon series, including elements relating to CoComelon plots, themes, mood, setting, pace, and sequences of events. Attached hereto as **Exhibit A** is a true and correct copy of a chart I prepared that reproduces the "Element No.," "Classification," and "Description" columns of the Appendix 4, Part 1 chart of CoComelon expressive elements from my Opening Report (Dkt. No. 164-1, Appendix 4, on pages 242-245 of the PDF file), and additionally adds columns providing exemplary citations to CoComelon Works, or timestamp locations in such works, that exemplify or illustrate these expressive elements described in the chart. Elements 115-121 refer to larger scale copying of larger chunks of CoComelon expression (song subject matter, visual arrangements, titles, plots, sequences, etc.) from specific CoComelon Works.

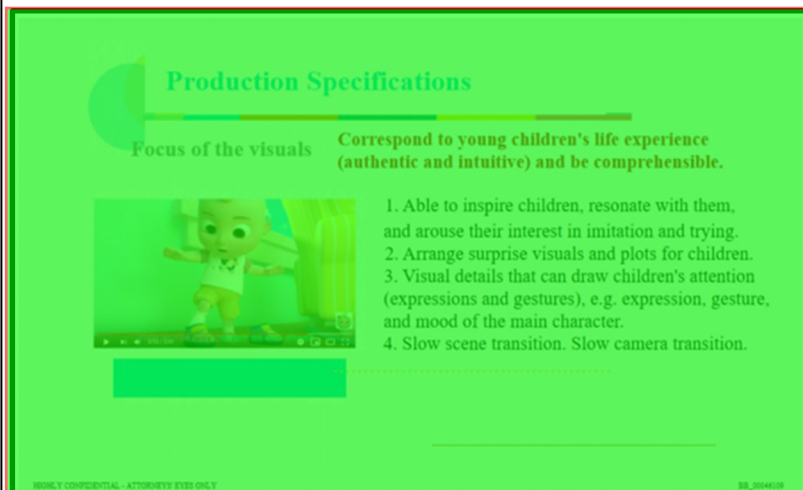
4. To perform my analysis, I examined each Infringing Work, and recorded in a chart the combination of CoComelon expressive elements copied in that Infringing Work. That chart is provided in Appendix 4, Part 2 of my Opening Report. Dkt. 164-1 at PDF pages 246-368. This analysis indicated that Defendants' Infringing Works copy one or more of Plaintiffs' CoComelon characters, such as JJ and JJ's family members, mom, dad, sister YoYo, and brother TomTom, including as they are named, depicted and developed, selected, and arranged in CoComelon Works. As my chart shows, all Infringing Works also copy a multitude of expressive elements of the look and feel and cinematography of CoComelon, including various elements of plot, themes, dialogue, mood, setting, colors, pacing, sequence of events, camera angles, and precise character movements contained in the CoComelon Works that depict and develop the CoComelon characters.

5. For example, I understand that Defendants have moved for summary judgment on their Infringing Video "Rain Rain Go Away," which I understand is listed in Dkt. 180-3 as Exhibit T-19 (BB_00047326), T-238 (BB_00048576), and T-269 (BB_00050818). My analysis indicates that Super JoJo's "Rain Rain Go Away" (BB_00047326) uses about 90 of the 121

elements of expression similarly to the CoComelon Works, through use of the JoJo and family characters, whose selection and combination of physical and conceptual characteristics are copied from CoComelon (about 50 overlapping expressive elements), and through use of a selection and combination of look and feel, cinematography and song-related elements taken from CoComelon (about 40 overlapping expressive elements). Dkt. 164-1, Appx. 4 Part 2 at 11 (PDF page 256). Similar analyses are provided for BB_00048576 and BB_00050818, which are close to the same videos except for the addition of intro and outro material to some of them. *Id.* at 90, 111 (PDF pages 335, 356).

6. Appendix 4, Part 2 of my Opening Report applies this methodology to each of the Infringing Works, assessing and tabulating the elements of CoComelon expression copied by each of those Infringing Works. As that analysis shows, every Infringing Work copies a multitude of CoComelon expressive elements and is substantially similar to one or more of the CoComelon Works. *See* Dkt. 164-1 Appendix 4; *see also id.* ¶¶ 190, 194, 234, 236-40.

7. **JJ.** As I described in my October 25, 2022 Opening Report (Dkt. No. 164-1 or Dkt. No. 175-5), I have reviewed the “Super JoJo Specifications” document identified to me as Deposition Exhibit 20 (BB_00046093-122 (certified translation)).² Defendants’ copying began with this plan for producing Super JoJo, which was drafted before a single Super JoJo video was



made. *See* Dkt. No. 165, ¶¶ 14-15, Ex. 524; Dkt. 164-1 ¶¶ 100-102. In these Super JoJo Specifications, as shown at left, Defendants instructed their team to focus the visuals for their new series on the JJ character from CoComelon,

² I am informed this document was submitted as Dkt. No. 165, Exhibit 524 (filed under seal at Dkt. No. 172-10). I will refer to it here as Dkt. 165, Ex. 524.

1 listing the attributes that make CoComelon a huge success. Dkt. 165, ¶¶14-25, Ex. 524.

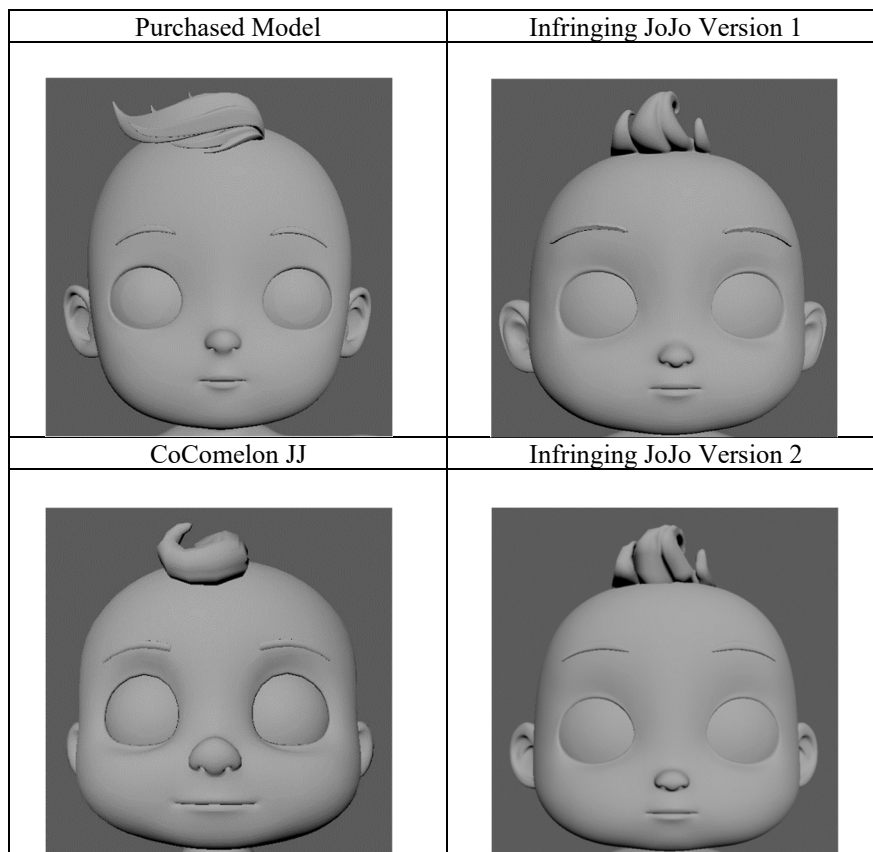
2 Defendants proceeded to execute this plan, watching, studying, downloading, and copying the
3 CoComelon Works to create the Super JoJo franchise.

4 **8.** As previewed in these Super JoJo Specifications and described in my Opening
5 Report, Defendants' Infringing Works do focus on the experiences of a small child, JoJo, and try
6 "to inspire children" and "resonate with them" by making the main character JoJo a replica based
7 on CoComelon's popular JJ character. Indeed, rather than use an original design for JoJo,
8 Defendants purchased a 3D model and re-sculpted it to replicate JJ's physical traits. *See* Dkt.
9 165 ¶ 55, Ex. 556 (Chen) 61:17-19; Dkt. 164-1 ¶ 103. As detailed in Appendix 10 to my
10 Opening Report (and as reproduced here and attached as **Exhibit E**), I examined the model and
11 rigging of Defendants' JoJo character and observed that Defendants started with a commercially
12 purchased rig (BB_00058492) and then modified its features to make the JoJo character. Dkt.
13 164-1 ¶ 103. I am informed and understand that the metadata of the purchased rig file
14 (BB_00058492) indicates that it was created May 11, 2018, which is more than a year after JJ
15 was created and published on YouTube. When I compared the commercially purchased model
16 to an April 2019 JoJo rig,³ it appeared to me that significant portions of the rig were either
17 replaced or entirely modified to make the JoJo model. For example, my examination indicates
18 that the control rigging of the commercial rig was removed, its face, head, eyebrows and hair
19 were either removed or entirely modified, and the body itself was changed around the shoulders,
20 elbows, knees and navel to make the JoJo rig resemble JJ more closely. Only the hands and feet
21 and parts of the body usually hidden by clothes were relatively unchanged. The colors and
22 textures of the model were changed as well. As such, the JoJo model is not recognizable as
23 having come from the purchased rig and its resemblance to the JJ model⁴ is quite strong. For
24 example, as shown in the figure below and described in more detail in **Exhibit E**, JoJo's head
25 shape was altered to be squatter and rounder, with slight indentations above the ears – more like

26 _____
27 ³ BabyBus Production Vol. HD, "D:\TV_Diyoun\Dyou\6.Model\A_BabyBus6_series\A_Main
character\Baby\Baby_Rig_Fin_1.mb"

28 ⁴ MB035852, "\Plaintiffs Moonbug Treasure Studios Production Vol.
2\XDRIVE\Content\Assets\Character\NewBaby\WIP\Rig\Baby_rig_004.ma"

JJ's. The eyes were slightly flattened and depressions added above and below the eyes – more like JJ's. A sharper transition below the nose was added – more like JJ's. I understand that Super JoJo's lead developer and Defendants' 30(b)(6) witness on the conception, creation, and development of the JoJo character have testified that they were aware of JJ when they made the JoJo model and rig. Dkt. No. 165 (Apple Decl.) ¶ 51, Ex. 552 (X. Lin) 16:25-17:21; *id.* ¶ 54, Ex. 555 (Sun) 10:3–13; 39:8–13. And as described in my Opening Report and its Appendix 10 (attached here as **Exhibit E**), when Defendants undertook a redesign of the Super JoJo character, they not only rejected any designs that would make JoJo more different from JJ, the slight alterations made to the JoJo rig⁵ actually made him more similar to JJ. See Dkt. 164-1 ¶¶ 130, 175, 236. I understand Defendants have testified they rejected these alternative designs for JoJo for fear the audience would not accept them. *Id.*, ¶ 56, Ex 557 (Zhang) 66:13-67:1, 67:15-68:4.



⁵ BabyBus Production Vol. HD, "F:\TV_Diyoun\Diyou_new\6.Model\A_BabyBus6_series\A_Main character\baby\Baby_Mo_Fin1.mb"

See **Exhibit E** at 1 for citation details for these images.

9. The textures and color added to the JoJo model and rig add to its substantial similarity to JJ, to the point that both characters appear nearly identical, as the comparisons reproduced below from my Opening Report (Dkt. 164-1 ¶ 206) show:



Dkt. 165, Ex. 015 - MB037904 (Yes Yes Vegetables, source of JJ images); Dkt 165, Ex. 150 - BB_00012974 (Yes Yes Vegetables, source of JoJo images).

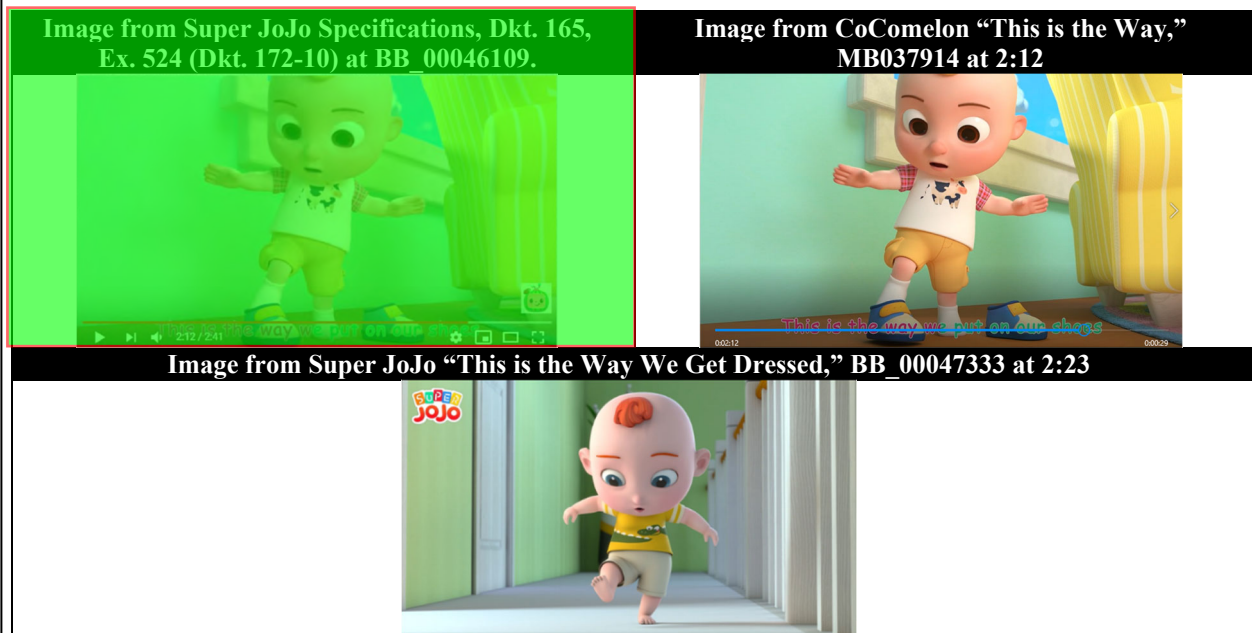
10. As previewed by the “Super JoJo Specifications,” Defendants’ Infringing Works also use the visual arrangements and details of their main character JoJo to draw audience attention, including using the “expression, gesture and mood of the main character.” Dkt. No. 165, ¶15, Ex. 524. Examples abound, including Defendants’ copying of JJ’s poses and expressions for JoJo (see for example the figure above) – and also including appropriating JJ’s signature move of raising both arms with a circular or hands waving motion to express excitement or joy. Attached hereto as **Exhibit F** is a true and correct copy of a gif file that I prepared showing examples of JJ’s use of this signature move in a number of the registered CoComelon Works,⁶ shown next to JoJo’s use of the same move in a number of Infringing Works on which I understand Defendants now seek summary judgment. Again, the substantial similarities of the characters, and their expression, gesture and mood are apparent in these

⁶ CoComelon Works represented in the gif include: No No Playground Song (MB037926, Dkt. 165 (Apple Decl.) Ex. 48), Yes Yes Playground Song (MB037886, Dkt. 165 Ex. 3), Yes Yes Vegetables (MB037904, Dkt. 165 Ex. 15), Yes Yes Bedtime Song (MB037916, Dkt. 165 Ex. 57)).

1 animations. In the chart below, I list the Infringing Works represented in the gif, and provide a
 2 citation to my analysis that tabulates how these Infringing Works are substantially similar to
 3 CoComelon Works:

Infringing Work	Citation for Video	Substantial Similarity Analysis
Peek a Boo Song (BB_00047324)	Dkt. 165, Ex. 179 Dkt. 180-3, Ex. T-17	Dkt. 164-1 Appx. 4 at 11 (PDF page 256)
One Potato, Two Potatoes (BB_00013110)	Dkt. 165, Ex. 156 Dkt. 180-3, Ex. T-8	Dkt. 164-1 Appx. 4 at 3 (PDF page 248)
Pat a Cake (BB_00047430, BB_00013106) ⁷	Dkt. 165, Ex. 275 Dkt. 180-3, Ex. T-101	Dkt. 164-1 Appx. 4 at 43 (PDF page 288)

9 11. For another example, the JJ images in Defendants' Super JoJo Specifications
 10 came from the CoComelon Work "This is The Way" (MB037914, Dkt. No 165, Ex. 42) which
 11 shows JJ and his siblings getting ready in the morning through a series of scenes – including
 12 waking up, getting dressed, and brushing their hair and teeth. As described in further detail
 13 below, a number of early Super JoJo videos (for which Defendants seek summary judgment)
 14 copied plot points, scenes, and multiple visual images from this video. One example is shown
 15 below, where the Super JoJo video reproduces the JJ character as shown in the specifications and
 16 in the CoComelon Work, including his facial expression, pose, gestures of his arms and mood:



⁷ I have reviewed BB_00013106 and BB_00047430 and do not see differences between them.

1 12. As mentioned above, the first 29 elements of CoComelon expression used in my
2 substantial similarity analysis relate to physical and conceptual characteristics of CoComelon's
3 JJ. **Exhibit A** to this declaration provides citations to CoComelon Works, or timestamp
4 locations in such works, of examples that illustrate these expressive elements relating to JJ.
5 Appendix 4 to my Opening Report (Dkt. 164-1, Dkt. 175-5) tabulates the presence of these
6 elements in all the Infringing Works.

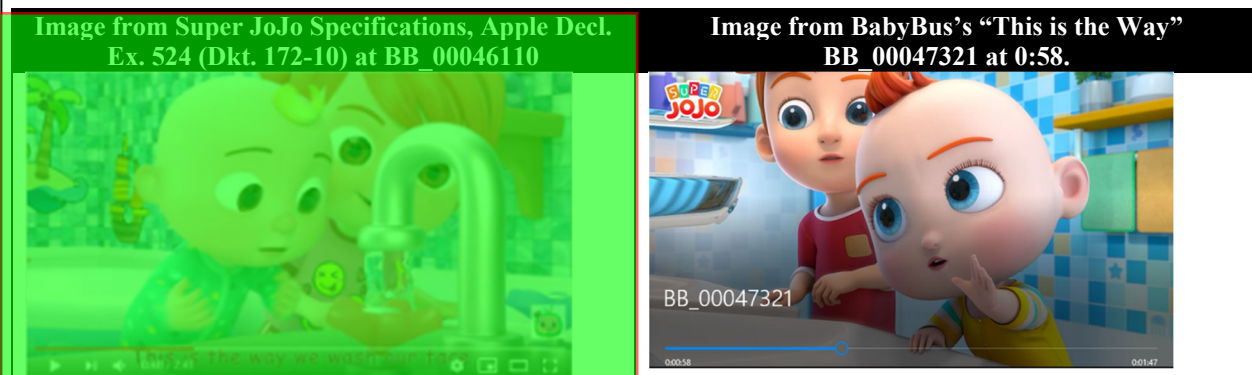
7 13. All of these facts, together with others described in my Opening Report, inform
8 and support my opinion that JoJo is substantially similar to JJ, and that all the Infringing Works
9 are substantially similar to the CoComelon Works on that basis alone. The Infringing Works
10 use JoJo as the focus of the visuals, animation, and as the fictional character that drives the story
11 forward. Because JoJo is a copy of JJ, created specifically to mimic his key attributes and
12 capitalize on his star power, all Infringing Works infringe CoComelon by incorporating the JoJo
13 character.

14 14. **This is the Way.** For further examples, I understand that Defendants have moved
15 for summary judgment on their Infringing Videos "This is the Way" and "This Is the Way We
16 Brush Our Teeth," which I understand are listed in Dkt. 180-3 as Defendants' Exhibits T-1
17 (BB_00012949) and T-16 (BB_00047321), respectively. I have reviewed the videos produced at
18 BB_00012949 and BB_00047321 (Dkt. No. 165, Exs. 160 - BB_00012949 and Ex. 177 -
19 BB_00047321), and I can detect no differences between them apart from intro/outro material.
20 My analysis indicates that these videos use more than 90 of the 121 elements of expression
21 similarly to the CoComelon Works, through use of the JoJo and family characters, whose
22 selection and combination of physical and conceptual characteristics are copied from
23 CoComelon (about 44 overlapping expressive elements), and through use of a selection and
24 combination of look and feel, cinematography and song-related elements taken from CoComelon
25 (about 49 overlapping expressive elements). Dkt. 164-1, Appx. 4 Part 2 at 4, 10 (PDF pages
26 249, 255).

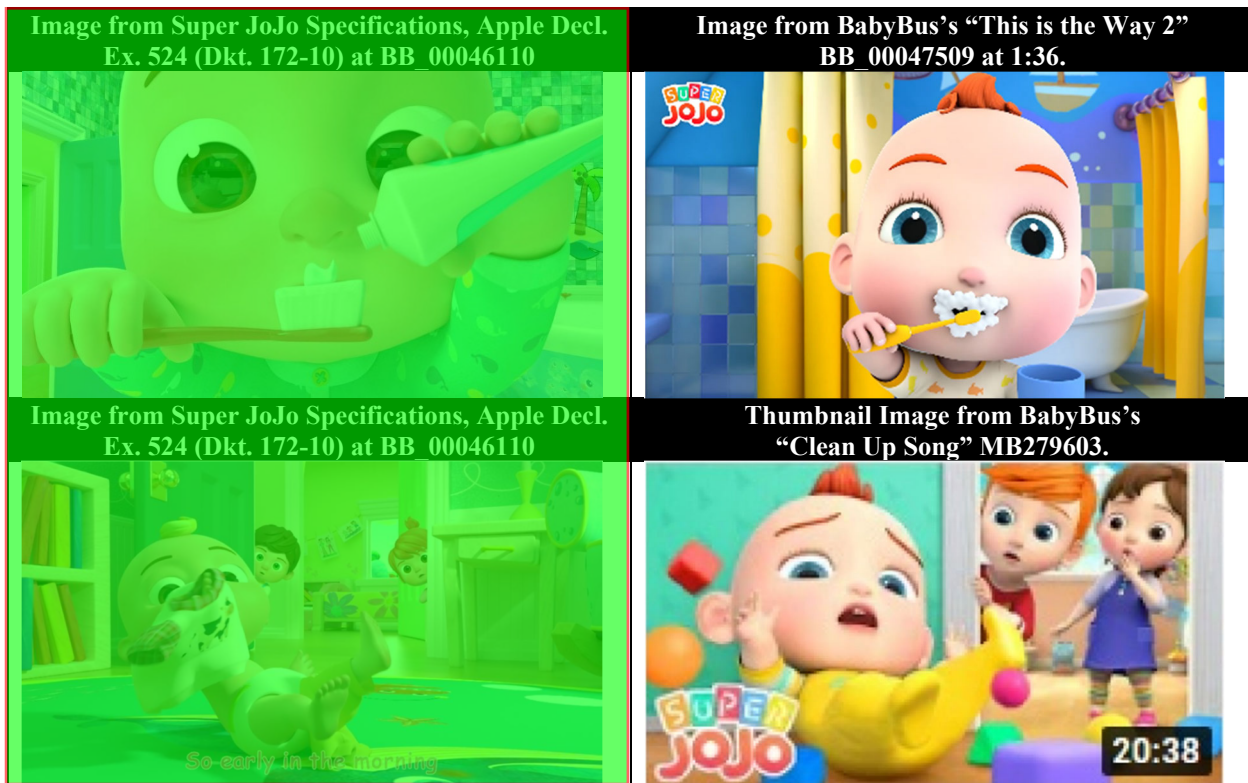
15. Again, I have reviewed the Super JoJo Specification document, which contains screenshots from CoComelon's video "This is The Way." Dkt. No. 165 ¶¶ 14-19. I reproduce a page from the Super JoJo Specification below:



Dkt. No 165, Ex. 524 (BB_00046093) (certified translation) at 19. I have confirmed that the image at left comes from CoComelon's registered This is The Way video (Dkt. No 165, Ex. 042 - MB037914) at timestamp 0:48, the image in the middle from timestamp 1:15, and the image at right from timestamp 1:33. See also Dkt. No. 165 ¶¶ 14-19. In my review of Defendants' This Is the Way We Brush Our Teeth (Dkt. 165 Ex. 177 - BB_00047321), I have found animation that reproduces both the subject matter (sibling helping the baby wash his face at the sink) and visual composition of the very image that Defendants copied into the Super JoJo Specifications document:



Images with substantially similar subject matter and composition to the other two images from CoComelon's This is The Way that were copied into the Super JoJo Specifications were also reproduced in Super JoJo materials as follows:



I understand that Defendants have moved for summary judgment on their "This is the Way 2" video. *See* Dkt. 165, Ex. 346 – BB_00047509 (This is the Way 2); *see also* Dkt. 180-3, Ex. T-170 (This is the Way 2).

16. Further, I have reviewed a certified translation of Defendants' planning document for a video entitled "I'm Happy to Be Clean," produced at BB_00047841.⁸ This document contains copies of three images from the CoComelon video "This is the Way." Attached hereto as **Exhibit B** is a true and correct copy of a document that shows (1) the CoComelon images copied into Defendants' planning document BB_00047841, (2) the same images as they exist in CoComelon's registered videos for "This is the Way" (Dkt. No 165, Ex. 042 – MB037914) and "No No Bedtime" (Dkt. No. 165, Ex. 018 – MB037906), and (3) substantially similar images in Defendants' This is the Way We Brush Our Teeth (Dkt. 165, Ex. 177 – BB_00047321; *see also* Dkt. 180-3, Ex. T-16). The planning document also outlines the animation of this video as

⁸ I am informed that BB_00047841 and its certified translation will be made available as Exhibit D to the Declaration of Deborah Hedley filed commensurately.

“Baby tries to brush his teeth, wash his face and comb his hair. Though he is awkward, his older brother and sister encourage him and practice washing happily together.” Hedley Decl. Ex. D at BB_00047841 (certified translation). It also states that the “animation focuses” should be exaggerating the awkwardness of the baby’s actions “to present interesting scenes,” and “Please vividly show the older brother and older sister’s love and patience for Baby through their expression and action.” *Id.*

17. Further, attached here as **Exhibit C** is a true and correct copy of a video I constructed providing a comparison of a number of shots and sequences from CoComelon “This is the Way” (Dkt. No 165, Ex. 042 – MB037914) and Super JoJo “This is the Way We Brush Our Teeth” (Dkt. 165, Ex. 177 – BB_00047321). The comparison shows numerous plot points and visual sequences copied from the CoComelon video into the Super JoJo video in a way that makes them substantially similar, even if the Super JoJo video has changed the order of some of the sequences. Copied sequences include (1) the baby’s brother washing his face, (2) the baby’s brother demonstrating to the baby how to do so, (3) the baby picking up water with delight and washing his own face using circular motion on his cheeks, (4) the two siblings coming to the baby’s sides to congratulate him on the face washing, (5) the baby trying to figure out tooth brushing on his own, overloading a toothbrush with toothpaste and filling his mouth with foam, (6) a sibling gently correcting the baby and demonstrating and pointing at the proper amount of toothpaste to apply, (7) and a sibling then demonstrating how to brush. Most of these copied plot points / sequences are particularly described in the Super JoJo planning document

BB_00047841, described above. See Hedley Dec. Ex. D (certified translation) at BB_00047843-46. I also note that these images show the extreme amount of correspondence between the CoComelon and Super JoJo bathroom designs, including the layout of the sink counter area with multiple sinks and the multicolor blue tile walls with other colorful accents. In my opinion, Super JoJo’s “This is the Way We Brush Our Teeth” (BB_00047321) video is substantially similar to multiple CoComelon Works.

18. Further, I understand Defendants are also moving for summary judgment on their Super JoJo video “This is the Way 2,” which I understand is listed in Dkt. 180-3 as Defendants’





Exhibit T-170 (BB_00047509) and T-324 (BB_00050964, called just “This is the Way”). I have reviewed the videos produced at BB_00047509 and BB_00050964, and see that they both mainly contain the same video, although BB_00047509 contains about 30 seconds of additional material. Dkt. No. 165, Ex. 346 – BB_00047509 and Ex. 503 – BB_00050964. My analysis indicates that these videos both use a combination of scores of expressive elements from CoComelon, as described in Appendix 4 of my Opening Report. Dkt. 164-1, Appx. 4 Part 2 at 66, 119 (PDF pages 311, 364). In addition, attached hereto as **Exhibit D** is a true and correct copy of a video that shows a number of examples of substantially similar images in the Super JoJo video (Ex. 503 – BB_00050964) that are copied from CoComelon’s copyrighted “This is the Way” (Dkt. No 165, Ex. 042 – MB037914).

19. **Swimming Song.** I understand that Defendants have moved for summary judgment on their Infringing Video “Swimming Song,” which I understand is listed in Dkt. 180-3 as Defendants’ Exhibit T-4 (BB_00012966). My analysis indicates that this video uses more than 100 of the 121 elements of expression similarly to the CoComelon Works, through use of the JoJo and family characters, whose selection and combination of physical and conceptual characteristics are copied from CoComelon (about 52 overlapping expressive elements), and through use of a selection and combination of look and feel, cinematography and song-related elements taken from CoComelon (about 52 overlapping expressive elements). Dkt. 164-1, Appx. 4 Part 2 at 4 (PDF page 249).

20. In my opinion, the substantial similarity between Super JoJo’s “Swimming Song” (Dkt. 165, Ex. 159 – BB_00012966) and CoComelon’s “Swimming Song” (Dkt. 165, Ex. 033 – MB037898) is not an accident. I have reviewed a copy of a document Bates-numbered BB_00001008 and its certified translation, which states it is a planning document for a Super JoJo video “Baby Learns to Swim.”⁹ This document contains copies of three images from the CoComelon video “Swimming Song.” Hedley Dec., Ex. E. Attached hereto as **Exhibit G** is a

⁹ I am informed BB_00001008 and its certified translation will be made available as Exhibit E to the commensurately filed declaration of Deborah Hedley.

true and correct copy of a document that shows (1) the CoComelon images copied into Defendants' planning document BB_00001008, (2) the same images as they exist in CoComelon's registered video for "Swimming Song" (Dkt. 165, Ex. 033 – MB037898), and (3) substantially similar images in Defendants' Swimming Song (Dkt. 165, Ex. 159 – BB_00012966). The exhibit also details numerous additional plot points, sequences and visual images copied from CoComelon's Swimming Song into Super JoJo's version, including the following:

Original Images in CoComelon "Swimming Song" (MB037898)	Substantially Similar Material in Super JoJo "Swimming Song" (BB_00012966)
 <p data-bbox="203 1003 760 1150">Image from CoComelon "Swimming Song" (MB037898) at 0:29, JJ nervously looks into the pool, shown with an upward camera angle and distorted by the water.</p>	 <p data-bbox="776 1003 1338 1150">Image from BB_00012966 at 0:16, JoJo nervously looks into the pool, shown with an upward camera angle and distorted by the water.</p>
 <p data-bbox="203 1465 760 1575">Image from MB037898 at 0:32, JJ's family, already in the pool, beckon him to join them.</p>	 <p data-bbox="776 1465 1338 1575">Image from BB_00012966 at 0:21, JoJo's family, already in the pool, beckon him to join them.</p>

**Original Images in CoComelon
“Swimming Song” (MB037898)**



Image from MB037898 at 0:36, JJ cautiously dips his right foot in the pool.



Image from MB037898 at 0:44 – JJ's mom places him in the pool.



Image from MB037898 at 1:02 – JJ, held by his father, a sibling is in the pool on their back.



Image from MB037898 at 1:46 – JJ's brother and sister race each other in the pool.

**Substantially Similar Material in Super
JoJo “Swimming Song” (BB_00012966)**



Image from BB_00012966 at 0:24, JoJo cautiously dips his right foot in the pool.



Image from BB_00012966 at 0:29 – JoJo's mom places him in the pool.



Image from BB_00012966 at 1:38 – JoJo, held by his father, a sibling is in the pool on their back.



Image from BB_00012966 at 2:06 – JoJo's brother and sister race each other in the pool.

**Original Images in CoComelon
“Swimming Song” (MB037898)**



Image from MB037898 at 1:50 – JJ sees his brother and sister swim and wants to do the same.



Image from MB037898 at 2:11 – JJ's brother holds onto the edge of the pool and demonstrates kicking.



Image from CoComelon “Swimming Song” (MB037898) at 2:12.



Image from MB037898 at 2:15 – JJ's father laughs and holds him while he practices holding the edge of the pool and

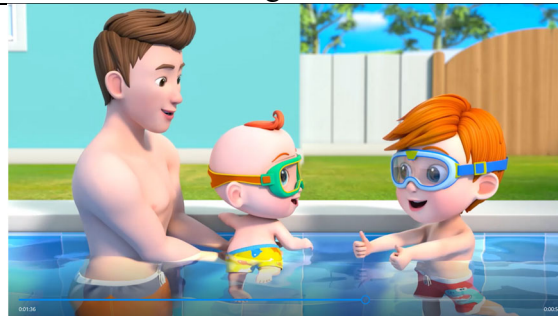
**Substantially Similar Material in Super
JoJo “Swimming Song” (BB_00012966)**



Image from BB_00012966 at 2:07 – JoJo sees his brother and sister swim and wants to do the same.





Image from BB_00012966 at 1:20 – JoJo's brother holds onto the edge of the pool and demonstrates kicking.



Images from BB_00012966 at 1:36.



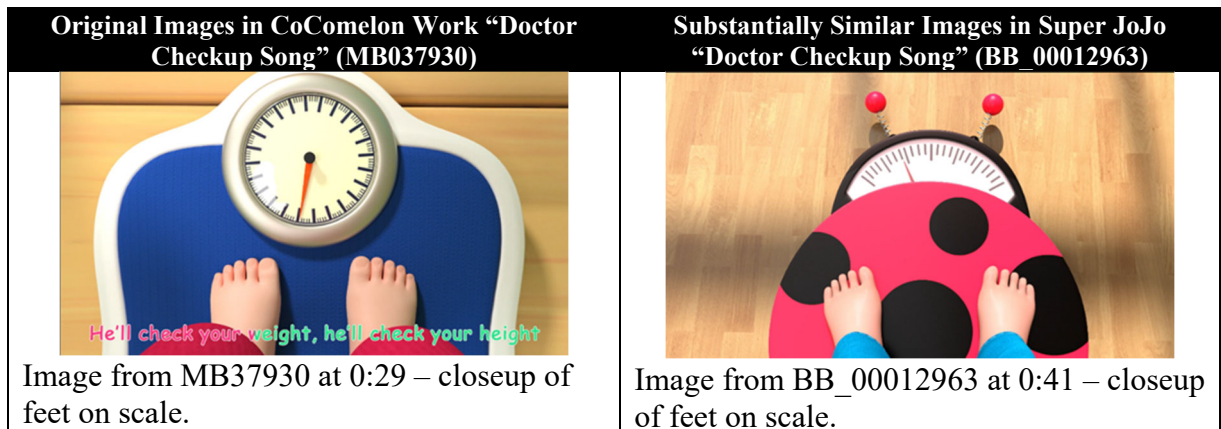
Images from BB_00012966 at 1:36 – JoJo's father laughs and holds him while he practices holding the edge of the pool

Original Images in CoComelon "Swimming Song" (MB037898)	Substantially Similar Material in Super JoJo "Swimming Song" (BB_00012966)
kicking, getting a "thumbs up" from his brother.	and kicking, getting a "thumbs up" from his brother.
 <p>Move my arms do do do do do do</p>	
Image from MB037898 at 2:18 – JJ's father holds him while he practices using his arms to swim.	Images from BB_00012966 at 1:50 – JoJo's father holds him while he practices using his arms to swim.
 <p>Move my arms</p>	
Image from CoComelon "Swimming Song" (MB037898) at 2:25.	Images from BB_00012966 at 2:10.
	
Image from MB037898 at 2:33 – the entire family floats on their backs.	Images from BB_00012966 at 2:26 – the entire family floats on their backs.

21. **Doctor Check Up Song.** I understand that Defendants have moved for summary judgment on their Infringing Video "Doctor Checkup Song," which I understand is listed in Dkt. 180-3 as Defendants' Exhibit T-3 (BB_00012963). My analysis indicates that this video uses about 90 of the 121 elements of expression similarly to the CoComelon Works, through use of the JoJo and family characters, whose selection and combination of physical and conceptual characteristics are copied from CoComelon (about 42 overlapping expressive elements), and

through use of a selection and combination of look and feel, cinematography and song-related elements taken from CoComelon (about 48 overlapping expressive elements). Dkt. 164-1, Appx. 4 Part 2 at 2 (PDF page 247).

22. In my opinion, the substantial similarity between Super JoJo's "Doctor Checkup Song" and CoComelon's "Doctor Checkup Song" (Dkt. 165, Ex. 060 – MB037930) is not an accident. I have reviewed a copy of documents Bates-numbered BB_00000755 and BB_00001023, and their certified translations, which state they are planning documents for a Super JoJo video "Health Check is Super Fun."¹⁰ Each of these documents contains copies of four images from the CoComelon video "Doctor Checkup Song." Hedley Dec. Exs. F, G. Attached hereto as **Exhibit J** is a true and correct copy of a document that shows (1) the CoComelon images copied into Defendants' planning documents BB_00000755 or BB_00001023, (2) the same images as they exist in CoComelon's registered video for "Doctor Checkup Song" (Dkt. 165, Ex. 060 – MB037930), and (3) substantially similar images in Defendants' "Doctor Checkup Song," (Dkt. 165, Ex. 152 – BB_00012963). A few examples follow:



¹⁰ I am informed that BB_00000755 and BB_00001023 and their certified translations will be made available as Exhibits F and G, respectively, to the commensurately filed declaration of Deborah Hedley.

Original Images in CoComelon Work “Doctor Checkup Song” (MB037930)



Image from MB037930 at 1:12 – JJ’s brother uses an eye-cover to test his vision.



Image from MB037930 at 1:21.

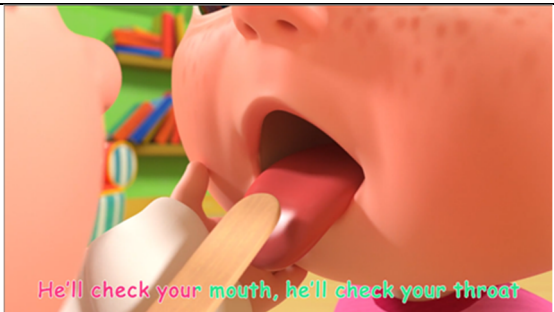


Image from MB037930 at 1:26 – JJ checks inside his sister’s mouth.



Image from MB037930 at 2:22 – JJ displays his results.

Substantially Similar Images in Super JoJo “Doctor Checkup Song” (BB_00012963)



Image from BB_00012963 at 1:05 – JoJo’s brother uses an eye-cover to test his vision.

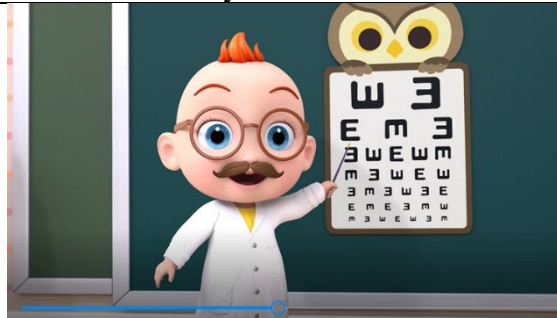


Image from BB_00012963 at 1:14.

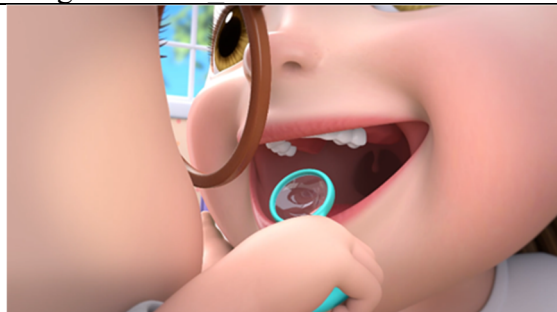


Image from BB_00012963 at 2:02 – JoJo checks inside his sister’s mouth.



Image from BB_00012963 at 2:28 – JoJo displays his results.

Original Images in CoComelon Work “Doctor Checkup Song” (MB037930)



Image from MB037930 at 2:29 – kids laugh as camera pulls away.

Substantially Similar Images in Super JoJo “Doctor Checkup Song” (BB_00012963)



Image from BB_00012963 at 2:34 – kids laugh as camera pulls away.

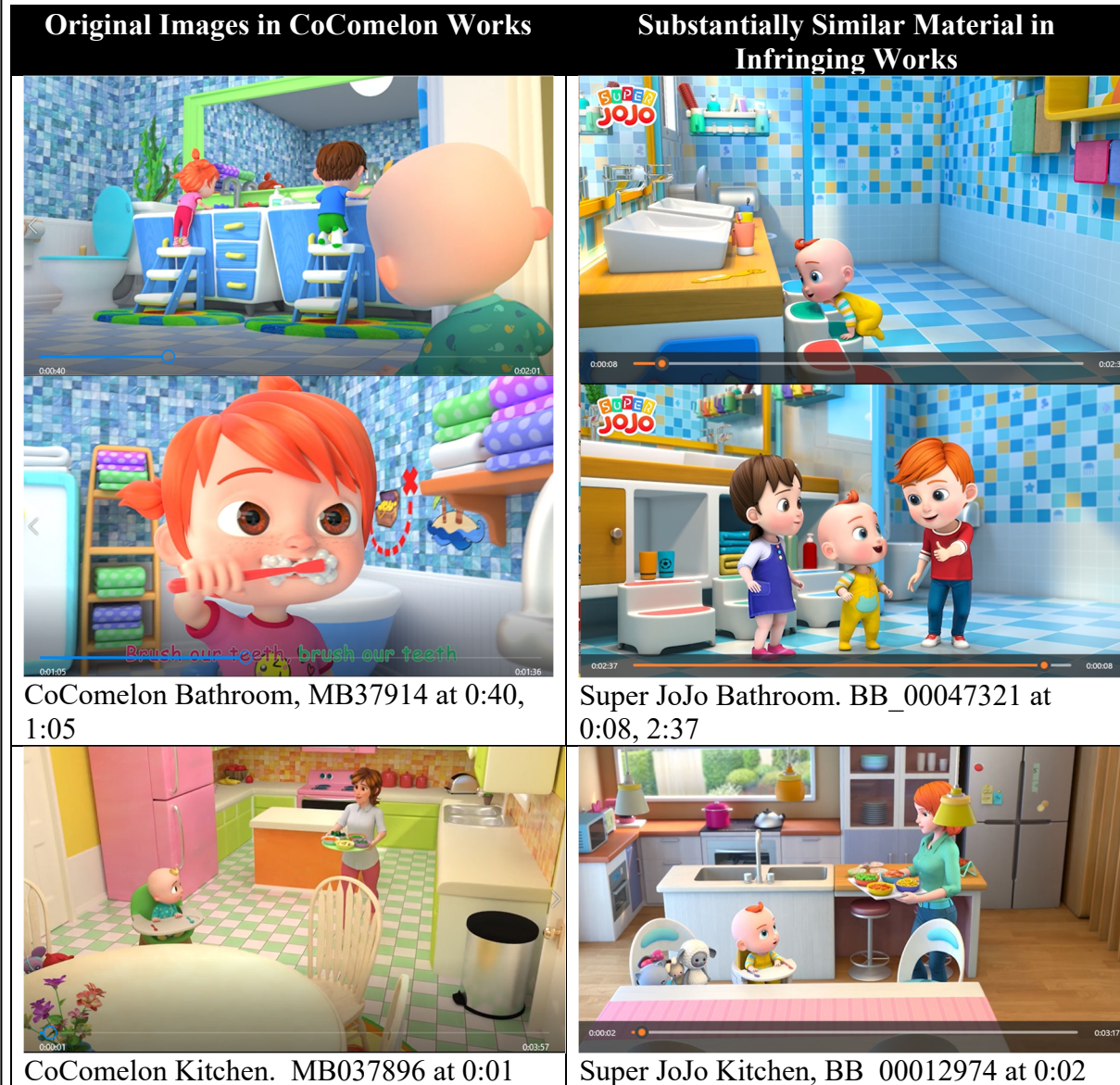
Also attached hereto as **Exhibit K** is a true and correct copy of a gif that I created showing the use in both videos of an unusual automatic height measuring device that appears copied from the CoComelon video.

23. **Sick Song.** I understand that Defendants have moved for summary judgment on their Infringing Video “Sick Song,” which I understand is listed in Dkt. 180-3 as Defendants’ Exhibit T-2 (BB_00012957). My analysis indicates that this video uses about 99 of the 121 elements of expression similarly to the CoComelon Works, through use of the JoJo and family characters, whose selection and combination of physical and conceptual characteristics are copied from CoComelon (about 48 overlapping expressive elements), and through use of a selection and combination of look and feel, cinematography and song-related elements taken from CoComelon (about 51 overlapping expressive elements). Dkt. 164-1, Appx. 4 Part 2 at 4 (PDF page 249). For example, I note that although Super JoJo’s “Sick Song” video (Dkt. 165, Ex. 158 – BB_00012957) does not use the same song as CoComelon’s Sick Song video (Dkt. 165, Ex. 036 – MB037900), it intersperses CoComelon’s “not feeling well” lyric, despite that this lyric makes no grammatical or rhyming sense when divorced from CoComelon’s rhyming lyrics.

24. **Setting.** I understand that Defendants have not moved for summary judgment on many of their Infringing Videos that exhibit frame by frame copying of CoComelon Works, including Super JoJo’s versions of CoComelon’s Yes Yes Vegetables Song, Bath Song, Rainbow Ice Cream – Colors Song, and Boo Boo Song, among others. See Dkt. 180-3 (noting that

summary judgment is not sought on certain Infringing Works, including videos at Bates Nos. BB_00012974 (Yes Yes Vegetables), BB_00012948 (Bath Song), BB_00013057 (Rainbow Ice Cream – Colors Song), and BB_00012972 (Boo Boo Song), among others). As I described in my Opening Report, one consequence of Defendants’ decision to meticulously copy the compositions and arrangements of characters in these and other CoComelon Works was that the overall layout of the home setting designs of the CoComelon environment were copied too, making the layout of the two houses similar. *See* Dkt. 164-1 ¶¶ 238, 248. That the similarity is deliberate can be inferred from documents such as BB_00029732 (Dkt. 165, Ex. 547 – BB_00029732), which is a copy of CoComelon’s registered “The Boo Boo Song” video (Dkt. 165 Ex. 069 – MB037934), but with an inset added in the upper-left corner that shows drawings of a bird’s-eye view of the set from JoJo’s house and drawings that detail where the characters and camera should be placed in order for Defendants to copy the CoComelon composition, including its arrangement of sets and cinematography. The substantial similarity is also apparent comparing the settings in the videos. The CoComelon and Super JoJo environments share an overall look and feel, with bright colors, rounded edges, soft lighting, and similar floorplan layouts. *See* Dkt. 164-1 ¶¶ 238, 248. There are many specific similarities with the CoComelon and Super JoJo home décor as well. Among other things, both homes have bathrooms with blue tile and nautical designs with white-rimmed clawfoot tub with cool exterior colors, and both babies’ bedrooms have white cribs, blue patterned sheets, oversized stuffed animals, cool colored walls with cloud designs, a wind-up mobile, and a whale motif as a wall decoration. *See id.* Both backyards have a white picket fence, a large tree on one side, a raised patio area, a striped umbrella and pool. *See id.* Once these models were made to copy CoComelon scenes, they were subsequently reused throughout the Infringing Videos. *See, e.g.,* Dkt. 165 ¶ 56, Ex. 557 (Zhang) 77:8-78:21 (admitting reuse of resources made for prior episodes). I provide a few examples of

the substantial similarity in the setting of the Super JoJo Infringing Works below, and in more detail in a chart, a true and correct copy of which is attached as **Exhibit H**.¹¹



¹¹ CoComelon Works cited: Dkt. No. 165, Ex. 042 - MB037914 (This is the Way), Ex. 009 - MB037892 (Bath Song), Ex. 045 - MB037924 (Yes Yes Vegetables Song), Ex. 069 - MB037934 (The Boo Boo Song), Ex. 006 - MB037890 (Colors Song – With Popsicles), Ex. 033 - MB037898 (Swimming Song), Ex. 024 - MB037908 (Peek a Boo). Infringing Works cited: Dkt. No. 165, Ex. 177 - BB_00047321 (This Is the Way We Brush Our Teeth), Ex. 162 - BB_00012948 (Bath Song), Ex. 150 - BB_00012974 (Yes Yes Vegetables Song), Ex. 149 - BB_00012972 (The Boo Boo Song), Ex. 155 - BB_00013057 (Rainbow Ice Cream – Colors Song), Ex. 159 - BB_00012966 (Swimming Song).

Original Images in CoComelon Works



CoComelon Kitchen. MB037924 at 1:38



CoComelon Yard and Fence. MB037934 at 1:50.



CoComelon Yard. MB037890 at 3:09.



CoComelon Living Room. MB037908 at 1:31

Substantially Similar Material in Infringing Works



Super JoJo Kitchen, BB_00013110 at 1:31



Super JoJo Yard and Fence. BB_0001293 at 1:12



Super JoJo Yard. BB_00013057 at 2:03.

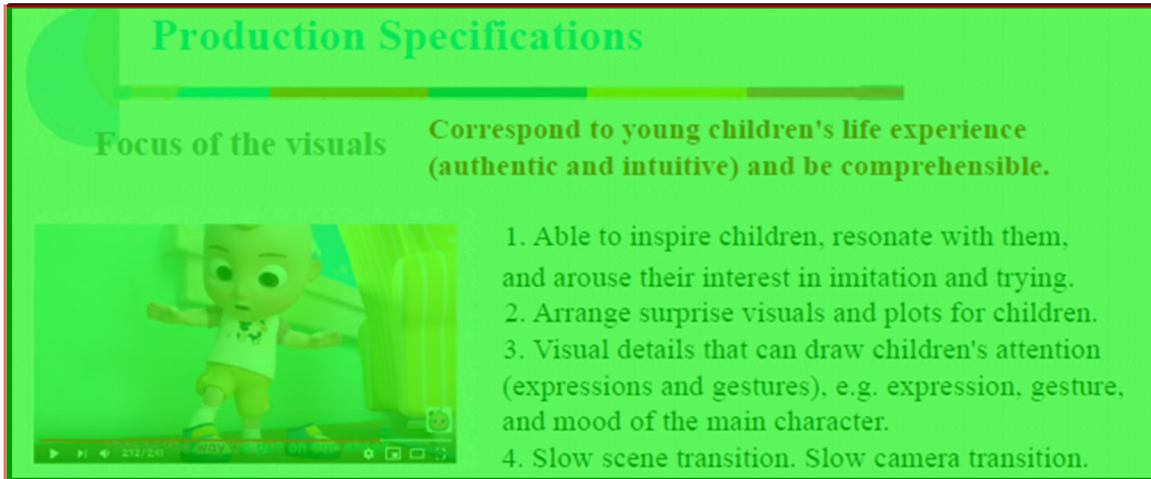


Super JoJo Living Room. BB_00012972 at 1:33

25. **Cinematography and Pacing.** As I described in my Opening Report, CoComelon’s distinctive cinematography style and pacing uses slow scene and camera transitions and visuals that are close to the world of a child, preferentially composing frames at the eye level of the main character and focused on him. This style, which in my experience, is distinctive for a preschool animation show, includes a specific gentle pacing of edits (shots generally of short or medium length), composition (heavily featuring low subjective angles, and very rarely going above eye-level), distance of shots (mostly close-ups, some medium shots, and very rarely long shots), predominant use of wide-angle camera lenses, soft indirect lighting and frequent use of camera movement, incorporating camera movement in most shots. Dkt. 164-1 ¶¶ 184-185. **Exhibit A** attached here provides examples of registered CoComelon videos wherein the expressive elements of this style can be observed. A good example is CoComelon’s registered “This is the Way” video (Dkt. 165, Ex. 042 – MB037914), which shows typical CoComelon camera work. The distinctive CoComelon use of slow camera movement occurring in most shots, slow and even editing of scenes, and slow transitions between sequences and settings can also be seen in CoComelon’s “Getting Ready for School” (Dkt. 165, Ex. 045 - MB037924) and “Yes Yes Bedtime Song” (Dkt. 165, Ex. 057 - MB037916) videos.

26. Defendants’ planning documents as described above indicate that Defendants deliberately set out to copy CoComelon’s distinctive cinematography and scene transition pacing. For example, the analytical video BB_00029732 (Dkt. 165, Ex. 547 - BB_00029732), in which Defendants added an inset on top of CoComelon’s “The Boo Boo Song” video (Dkt. 165 Ex. 69 - MB037934), with bird’s-eye view drawings of the set from JoJo’s house and drawings that detail where the characters and camera should be placed in order for Defendants to copy the CoComelon composition, indicates to me that Super JoJo intended to copy CoComelon’s cinematography. Making an analytical video like this is unusual because it is not strictly necessary if one is just copying the shots from the video. One would be more likely to see such a video in a film studies class, where it would be used to analyze the cinematographic style, to explain how to dissect, understand, and reproduce the look and feel of the video. Another example that indicates to me that Super JoJo meant to copy CoComelon’s cinematography and

1 pacing is the Super JoJo Specifications document (Dkt. 165, Ex. 524 at 18) that states that the
 2 “focus of visuals” for Super JoJo should include “Slow scene transition. Slow camera transition”



11 and “visuals close to the children’s world.” Both of these relate to the distinctive CoComelon
 12 style of edit pacing, composition, shot distance, lens usage and use of camera movement that I
 13 describe above, and that I have listed among the CoComelon expressive elements copied by the
 14 Infringing Videos in my analysis. *See, e.g.*, Dkt. No. 164-1, App’x 4 Part 1 (elements 75, 94,
 15 103-114); *id.* ¶¶ 239, 238.

16 Dkt. 165, Ex. 524 at 18.

17 27. In my review of Super JoJo videos, the Super JoJo videos use “Slow scene
 18 transition. Slow camera transition” and “visuals close to the children’s world” as copied from
 19 CoComelon. Here are a few examples:

- 20 a. In “London Bridge Is Falling Down” (Dkt. 165, Ex. 174 - BB_00047316) there
 21 are about 30 shots in the about 2:20 running time for this video, so the average shot is
 22 about four and a half seconds long. This gives the whole piece a slow pace in its editing
 23 and the effect of “slow scene transitions.” The video also uses slow and gentle camera
 24 movement extensively during many of the shots. Note the slow camera transitions in the
 25 first shot, which is over ten seconds long, with the camera transitioning slowly between
 26 three different framings – a closeup framing of the mother, a medium framing of the
 27 mother, and a medium framing of JoJo.

b. Similarly, the “Laughing Song” (Dkt. 165, Ex. 234 - BB_00047384) has about 29 shots in the about 2:20 running time for the video, giving an average shot of almost five seconds long. It also has an effect of “slow scene transitions” and gentle camera movement during many of its shots. For instance, in the second shot, the camera transitions from a closeup framing of the brother’s face, trucking back to include the sister and baby in the same shot. In the third shot, the camera very slowly moves forward to follow the brother as he moves towards the sister and baby.

c. Likewise, in “Five Monkeys” (Dkt. 165, Ex. 256 - BB_00047410) there are about 24 shots in the about 2:18 running time of the video, so the average shot is almost six seconds, giving the effect of “slow scene transitions.” Slow camera transitions include the shot at 1:05, which starts with the closeup framing of the toy monkey on the ground, then slowly moves to a framing of the door, and slowly moves to a closeup of the mother in the doorway. Another is the shot in 1:14, where the camera slowly follows the kids as they walk down the stairs, then gently transitions to a closeup framing of the sister after she falls on the stairs.

28. As mentioned above, about 14 elements of CoComelon expression used in my substantial similarity analysis relate to CoComelon’s distinctive cinematography and pacing. Dkt. 164-1, App’x 4 Part 1 (elements 75, 94, 103-114). **Exhibit A** to this declaration provides citations to CoComelon Works that illustrate these expressive elements. Appendix 4 to my Opening Report tabulates the presence of these elements in most of the Infringing Works.

29. All of these facts, together with others described in my Opening Report, support my opinion that all the Infringing Works are substantially similar to the CoComelon Works.

30. **Additional Examples of Copying of CoComelon Style.** As shown above, the Super JoJo Specifications state that the focus of Super JoJo visuals should include “surprise visuals and plots for children.” Dkt. 165, Ex. 524 at 18. Examples of this abound in CoComelon Works, such as the mother’s use of stuffed animals to demonstrate new activities and encourage the baby to try them, (*see, e.g.*, Dkt. 165, Ex. 015 - MB037904, Ex. 003 - MB037886), or the use of a special handmade tree for the children to decorate, (*see, e.g.*, Dkt. 165, Ex. 096 -

1 MB037954)), or the use of puppets and simple costumes to retell a classic story. *See, e.g.*, Dkt.
 2 165 Ex. 105 - MB037942. In my review of Super JoJo videos, I have noted multiple examples
 3 of Super JoJo's use of such "surprise visuals and plots for children" as well. The Super JoJo
 4 mother also uses stuffed animals to demonstrate new activities and encourage the baby to try
 5 them. *See, e.g.*, Dkt. 165, Ex. 188 - BB_00047333 ("This is the Way We Get Dressed," on
 6 which I understand Defendants seek summary judgment, *see* Dkt. 180-3, Ex. T-25). Defendants'
 7 "Doctor Checkup Song" (Dkt. 165 Ex. 152 - BB_00012963) uses plot surprises like a non-
 8 human doctor's assistant, and visual surprises like JoJo's doctor dress up costume and an
 9 automated height-measuring device, all substantially similar to elements of CoComelon's Doctor
 10 Checkup Song (Dkt. 165 Ex. 60 - MB037930).

11 31. The Super JoJo Specifications state that the focus of Super JoJo visuals should
 12 include "visual details that can draw children's attention (expressions and gestures), e.g.
 13 expression, gesture, and mood of the main character." Dkt. No. 165, ¶¶14-17, Ex. 524.
 14 CoComelon's "Getting Ready for School Song" (Dkt. 165, Ex. 045 - MB037924) is a good
 15 example of how CoComelon does this, as JJ's expressive gestures in this video help establish his
 16 character with dancing, enthusiasm, and his willingness to always try again. Likewise, as
 17 described above, the Infringing Works also are also strongly focused on the expression, gesture
 18 and mood of the main character in similar ways.

19 32. **Open Shut Them.** Another example of an Infringing Video that copies
 20 CoComelon gestures and themes is "Open Shut Them | Opposites Song." I understand that
 21 Defendants have moved for summary judgment on this video, which I understand is listed in
 22 Dkt. 180-3 as Defendants' Exhibit T-6 (BB_00013055). My analysis indicates that this video
 23 uses over 100 of the 121 elements of expression similarly to the CoComelon Works, through use
 24 of the JoJo and family characters, whose selection and combination of physical and conceptual
 25 characteristics are copied from CoComelon (about 52 overlapping expressive elements), and
 26 through use of a selection and combination of look and feel, cinematography and song-related
 27 elements taken from CoComelon (about 55 overlapping expressive elements). Dkt. 164-1, Appx.
 28 4 Part 2 at 3 (PDF page 248). This Infringing Video (Dkt. 165, Ex. 157 - BB_00013055) copies

1 the registered CoComelon “Opposites Song” video (Dkt. 165, Ex. 12 - MB037888) in its plot
2 and theme of the family banding together to play a game to demonstrate and teach the baby
3 about opposites, copies its lyrics (compare MB037888 at 0:14 (“Let’s all play the opposite
4 game”) and BB_00013055 at 0:03 (“Let’s play a game”)), copying the choice of many of the
5 pairs of opposites (using stuffed animals to demonstrate big and small, using ice cream cones for
6 hot and cold, covering fast and slow), and copying the reuse of a recurring gesture of closing and
7 opening the arms to illustrate the opposites (for example, compare MB037888 at 0:45 and
8 BB_00013055 at 1:18, both using outstretched upwards reaching arms to illustrate big).

9 33. In my opinion, the way the Infringing Works focus their visuals on “surprise
10 visuals and plots for children” and “visual details that can draw children’s attention (expressions
11 and gestures), e.g. expression, gesture, and mood of the main character” in a substantially similar
12 way as CoComelon, also supports my opinion that the Infringing Works are substantially similar
13 to the CoComelon Works.

14 I declare under penalty of perjury under the laws of the United States of America that the
15 foregoing is true and correct. Executed on January 3rd, 2023.

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Fran Krause